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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/084,837 07/26/98 LUTTICKEN

R 1/97269-US

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ROCKVILLE MD 20850-4373

HM12/0724

EXAMINER

MOSHER, M

ART UNIT	PAPER NUMBER
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1648

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DATE MAILED:

07/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.
09/084,837

Applicant(s)

Lutticken et al

Examiner

Mary Mosher

Art Unit

1648



- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

THE REPLY FILED 7/13/01 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attached
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 32-39
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☒ Other: 892

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Response to Arguments

Claims 32-39 remain rejected under 35 USC 103(a) for reasons of record. Applicant argues that, since Lewin teaches exact reversion to be rare, with forward mutation at a rate of 10^{-6} and back reversion 10-fold lower, there would have been no motivation to modify a single point mutation with this low probability of reversion. However, in the virology art, 10^{-7} reversion is not "low probability". In the IBDV art, it is not uncommon for 10^7 infectious viruses to be produced in each milliliter of culture medium. A back-mutation at the rate of 10^{-7} means about one revertant for each and every milliliter of virus stock produced. If the virus is then serially propagated as a mixed population of mutants and revertants, the proportion of revertants is furthermore likely to increase with every round, due to the competitive advantage of the mutation-free revertant. It is maintained that, even in the absence of specific direction, one of ordinary skill in this art would have been motivated to use one or more well-known means to avoid reversion of a useful mutation, such as those used for other viruses in the secondary references.

The attached abstract of a 1988 paper by Kibenge et al is cited as evidence that IBDV titers of 10^7 per ml were well known at the time of the invention.

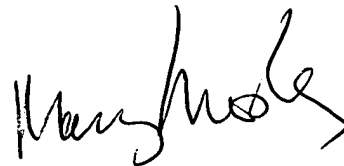
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is (703) 308-2926. The examiner can normally be reached on Monday -Thursday and alternate Fridays from 6:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. The fax phone number for this Group is now (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

July 23, 2001



**MARY E. MOSHER
PRIMARY EXAMINER
GROUP 1600**

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